

Subchapter M. Filings Requirements

Division 5. Filings Made Easy - Requirements for Property and Casualty Policy Form, Endorsement, and Manual Rule Filings
28 TAC §5.9323

Subchapter Q. General Property and Casualty Rules

Division 1. Residential Property
28 TAC §5.9700

INTRODUCTION. The Texas Department of Insurance adopts new 28 TAC Chapter 5, Subchapter M, Division 5, §5.9323 and new Subchapter Q, Division 1, §5.9700 with changes to the proposed text published in the August 28, 2015, issue of the *Texas Register* (40 TexReg 5445). The new sections are necessary to implement Insurance Code §2301.056, added by SB 112, 83rd Legislature, Regular Session (2013). On November 5, 2015, TDI held a public hearing on the proposal. In response to comments, TDI made a number of changes to the text, which are detailed below.

REASONED JUSTIFICATION. For residential property insurance policy forms, Insurance Code §2301.056 requires that:

1. the declarations page state the exact dollar amount of each deductible under the policy; and
2. the declarations page or a page separate from the declarations page:
 - a. list and identify each type of deductible under the residential property policy; and
 - b. identify or disclose any policy provision or endorsement that may cause the exact dollar amount of a deductible to change.

The new sections clarify that for residential property policy insurance forms:

1. insurers must file declarations pages with TDI for review and approval under Insurance Code §2301.006;
2. insurers must file renewal and amended declarations pages, and renewal certificates used as declarations pages;
3. no deductibles are exempt;
4. insurers must issue declarations pages at renewal if a deductible changes;
5. if using a separate disclosure page under §2301.056(c), that page must follow immediately

after the declarations page; and

6. insurers that choose to provide separate disclosure pages must include them each time they provide a declarations page or renewal certificate to a policyholder.

Before SB 112, no statute specifically required insurers to file declarations pages, although some insurers did so. With the enactment of SB 112, Insurance Code §2301.056 provides specific requirements for declarations pages, and TDI must now review them for compliance.

TDI is implementing Insurance Code §2301.056 in two separate rule sections. Section 5.9323 contains the filing requirements and will be part of the Filings Made Easy rules. Section 5.9700 contains the substantive requirements related to disclosing deductibles. These sections are effective September 1, 2016.

This order summarizes the comments TDI received on the proposed rules. In response to comments on the published proposal, TDI has adopted changes to the proposed text to improve clarity. The changes do not introduce new subject matter, create additional costs, or affect persons other than those previously on notice from the proposal.

Section 5.9323. Residential Property Declarations Page Forms. To ensure all declarations page forms comply with §2301.056, new §5.9323 specifies that insurers must file residential property insurance policy declarations page forms, including forms for renewal declarations pages, renewal certificates, amended declarations pages, and separate disclosure pages. Section 5.9323(b) specifies that insurers must file forms completed with sample - not actual - policyholder information, so TDI can verify that insurers will list the required deductible information.

TDI made changes to the proposed text in response to comments. These changes do not affect persons not previously on notice, nor do they raise new issues. The section heading of adopted §5.9323 is changed to "Residential Property Declarations Page Forms," and subsections (a) and (b) also now include the word "forms" to clarify that insurers must file sample declarations page forms rather than actual declarations pages. TDI added the phrase "not actual" to adopted subsection (b), to reiterate that insurers need only file sample policyholder information, rather than actual policyholder information. These changes clarify the filing requirements, and do not affect persons not previously on notice, nor do they raise new issues.

Section 5.9700. Residential Property Declarations Pages and Deductible Disclosures. For ease of use, new §5.9700 includes the statutory requirements for disclosing deductibles. Insurance Code §2301.056 does not exempt any deductibles, so §5.9700(a) specifies that deductibles include each type of deductible in the policy, which includes applicable endorsements. In response to comments, TDI removed the word "subdeductible" from §5.9700(a) as proposed, and added an example of how an insurer can identify a deductible.

Section 5.9700(b) reiterates the requirement in Insurance Code §2301.056(b) that the declarations page or a separate disclosure page identify or include a written disclosure that clearly identifies the applicable policy provision or endorsement if a residential property insurance policy or endorsement contains a provision that may cause the exact dollar amount of a deductible under the policy to change. In response to comments, TDI added an example of how an insurer can identify the applicable policy provision or endorsement.

Insurance Code §2301.056 also allows insurers to provide the required disclosures on a page separate from the declarations page. To ensure that policyholders can easily find the disclosures, §5.9700(c) requires that the separate disclosure page follow immediately after the declarations page.

Responding to comments, TDI revised §5.900 as proposed to insert a new subsection (d) to clarify that a declarations page and a separate disclosure page may each consist of more than one page.

To ensure policyholders have the most current information, if a deductible changes on the declarations page or a separate disclosure page, adopted §5.9700(e), which was proposed as subsection (d), requires insurers, at renewal, to issue a declarations page or renewal certificate. In response to comments, TDI removed the word "updated" from the proposed text to avoid confusion.

Section 5.9700(f), which was proposed as subsection (e), requires that insurers and agents include the separate disclosure page each time they provide a declarations page or renewal certificate to a policyholder, to further ensure that the policyholder has access to the most current deductible information. In response to comments, TDI specified that use of a separate disclosure page is at the option of the insurer or agent. Insurers that choose to provide separate disclosure pages must include the disclosure pages with the declarations page each time they provide a declarations page or renewal certificate to a policyholder.

None of the changes to §5.9700 as adopted affect persons not previously on notice, nor do they raise new issues.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

General Comments

Comment: Two commenters requested a public hearing.

Agency Response: TDI held a public hearing on November 5, 2015, in accordance with Government Code §2001.029.

Comment: A commenter asked TDI to limit the scope of the rules to personal lines residential property.

Agency Response: Both §5.9323 and §5.9700 specifically refer to residential property insurance policy declarations page forms, reflecting the requirement in Insurance Code §2301.056. Nothing in the rule or statute suggests that the scope extends beyond residential property.

Comment: A commenter asked TDI to extend the effective date 12 months, so insurers may implement necessary changes to comply with the new rules.

Agency Response: Section 2301.056 was effective September 1, 2013, and insurers should already be complying with declaration page requirements. Nonetheless, to allow insurers time to adapt to filing forms with sample policyholder information, TDI will extend the effective date six months. The adopted rules will be effective September 1, 2016.

Comment: A commenter stated that the Legislature did not intend to require prior approval of declarations pages when passing SB 112; but instead, the Legislature intended to simply require clear descriptions of how deductibles are calculated, and to provide the dollar amounts rather than percentage deductibles. The commenter expresses concern that prior approval of declarations pages is an additional regulatory burden.

Agency Response: Insurance Code §2301.056 requires residential insurance policy forms to include declarations pages. Insurance Code §2301.006 requires insurers to file policy forms. Therefore, insurers

must file declarations pages as part of residential property insurance policy forms.

Comment: A commenter stated that the cost estimate should be higher than stated in the proposal if insurers are required to make multiple new filings of renewal declarations pages and required separate disclosure pages.

Agency Response: Insurers are not required to file declarations or disclosure pages sent to actual policyholders. Rather, they are only required to file the forms, completed with sample policyholder information. TDI clarified this by adding the word "forms" to the filing requirements in §5.9323. TDI finds that the cost estimate as proposed is accurate.

Comments on §5.9323

Comment: A commenter asked that TDI delete the word "disclosure" from the section heading, and instead substitute the word "page" because "disclosure" is confusing.

Agency Response: TDI changed the section heading as adopted. As adopted, the section heading for §5.9323 is "Residential Property Declarations Page Forms."

Comment: A commenter expressed concern that the rule would require insurers to file new policy forms for each policy issued and refile every time there is any change in the dollar amount of a deductible or at renewal for each individual policyholder. The commenter suggested providing brackets and adding language similar to the variable material in life and health filings.

Agency Response: TDI revised §5.9323 as proposed to clarify that insurers are only required to file forms and not issued policies, disclosures, or declarations pages. If the insurer's declarations page form changes, the insurer must file the form, complete with sample information, as opposed to each unique policyholder declarations page. TDI revised subsection (b) as proposed to emphasize that insurers must not file any actual policyholder information, including policy numbers or other personal identifying information.

Comments on §5.9700

Comment: A commenter suggested TDI define "lists" and "identifies" as described in proposed §5.9700

or provide guidance as to what is acceptable. The commenter asks for clarification on what constitutes a sufficient listing or identification of a deductible, to help insurers generate compliant declarations pages.

Agency Response: TDI revised subsections §5.9700(a) and (b) to add clarifying examples: "To identify a deductible, the insurer must provide a brief description, such as: 'Wind and Hail,' 'Earthquake,' or 'Jewelry,'" and "To identify the applicable policy provision or endorsement, the insurer must provide a brief description and reference, such as, 'Inflation Adjustments: See page 1, Section A.2.a.'"

Comment: A commenter asks that TDI allow insurers to combine the declarations page and the separate disclosure into one document and affirmatively state insurers have the option to issue declarations pages that consist of more than one page to include all information required by the statute.

Agency Response: TDI clarified §5.9700 by adding new subsection (d) to provide that declarations pages and separate disclosures pages may each consist of more than one page. If an insurer chooses to use separate disclosures pages, the pages must immediately follow the declarations pages.

Comment: A commenter states the term "subdeductible" is unclear.

Agency Response: The statute requires that a declarations page list and identify each type of deductible. This does not exclude any deductibles, so TDI removed "subdeductible" in subsection (a) to avoid confusion.

Comment: A commenter states that in proposed §5.9700(d), the word "updated" and the alternative language at the end of the sentence is ambiguous and confusing and may create compliance issues, depending on how future TDI employees interpret the language.

Agency Response: As adopted, TDI removed the word "updated" and inserted additional text to the subsection, which was adopted as subsection (e) to clarify that if a deductible changes, insurers must issue a declarations page or renewal certificate at renewal.

Comment: A commenter suggests that proposed §5.9700(e) appears to require a separate disclosure page for each policy and asks for its removal.

Agency Response: TDI revised part of proposed §5.9700(e), adopted as subsection (f), clarifying that

only insurers that provide separate disclosure pages must include them when they provide declarations pages or renewal certificates to policyholders.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For with changes: National Association of Mutual Insurance Companies, American Insurance Association, the Insurance Council of Texas, and the Texas Coalition of Affordable Insurance Solutions.

Against: Property Casualty Insurers Association of America.

Subchapter M. Filings Requirements**Division 5. Filings Made Easy - Requirements for Property and Casualty Policy Form, Endorsement, and Manual Rule Filings**
28 TAC §5.9323

STATUTORY AUTHORITY. Section 5.9323 is adopted under Insurance Code §§2301.056, 2301.055, and 36.001. Section 2301.056 requires that declarations pages for residential property insurance policy forms fully disclose all deductibles. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

TEXT.**§5.9323. Residential Property Declarations Page Forms.**

(a) Insurers must file residential property insurance policy declarations page forms for approval under §5.9320 of this title (relating to Required Information for the Preparation and Submission of Policy Form, Endorsement, and Manual Rule (Other than Rating Manual) Filings). Declarations pages include renewal declarations pages, renewal certificates, amended declarations pages, and separate disclosure pages allowed under §5.9700 of this title (relating to Residential Property Declarations Pages and Deductible Disclosures).

(b) Filed declarations page forms must be completed with sample - not actual - policyholder information sufficient to demonstrate how the insurer will comply with this rule and Insurance Code §2301.056.

Subchapter Q. General Property and Casualty Rules
Division 1. Residential Property
28 TAC §5.9700

STATUTORY AUTHORITY. Section 5.9700 is adopted under Insurance Code §§2301.056, 2301.055, and 36.001. Section 2301.056 requires that declarations pages for residential property insurance policy forms fully disclose all deductibles. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

TEXT.

§5.9700. Residential Property Declarations Pages and Deductible Disclosures.

(a) All residential property insurance policy declarations pages must list and identify each type of deductible in the policy, including applicable endorsements, and state the exact dollar amount of each deductible. To identify a deductible, the insurer must provide a brief description, such as "Wind and Hail," "Earthquake," or "Jewelry."

(b) If a residential property insurance policy or endorsement contains a provision that may cause the exact dollar amount of a deductible under the policy to change, the declarations page or a separate disclosure page must identify or include a written disclosure that clearly identifies the applicable policy provision or endorsement. The policy provision or endorsement must explain how any change in the applicable deductible amount is determined. To identify the applicable policy provision or endorsement, the insurer must provide a brief description and reference, such as "Inflation Adjustments: See page 1, Section A.2.a."

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(c) Insurers may provide disclosures under this section on a separate disclosure page. The separate disclosure page must follow immediately after the declarations page.

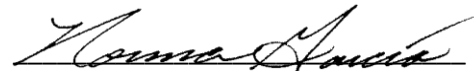
(d) A declarations page and a separate disclosure page may each consist of more than one page.

(e) Insurers must issue a declarations page at renewal if the dollar amount of a deductible changes on the declarations page or separate disclosure page. Alternatively, insurers may issue a renewal certificate that meets the requirements of this rule and Insurance Code §2301.056.

(f) Insurers and agents that provide separate disclosure pages must include them with the declarations page each time they provide a declarations page, as defined in §5.9323(a), to a policyholder.

7. CERTIFICATION. This agency certifies that legal counsel has reviewed the new sections and found them to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on February 4, 2016.



Norma Garcia, General Counsel
Texas Department of Insurance

The commissioner adopts new 28 TAC Chapter 5, Subchapter M, Division 5, §5.9323 and new 28 TAC Chapter 5, Subchapter Q, Division 1, §5.9700.



David C. Mattax
Commissioner of Insurance

COMMISSIONER'S ORDER NO. **4296.**